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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

FABIOLA WRIGHT, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents; ROBERT DUNCAN MCNEILL AND CAROL MCNEILL, Real Parties in Interest and Respondents.	B237265 (Los Angeles County Super. Ct. No. BS133517)

APPEAL from an order of the Superior Court of Los Angeles, Ann I. Jones, Judge. Affirmed.

Fabiola Wright, in pro. per. for Plaintiff and Appellant.

Carmen A. Trutanich, City Attorney, Terry Kaufmann Macias and Kim Rodgers Westhoff, Deputy City Attorneys, for Defendants and Respondents.

No appearance for Real Parties in Interest and Respondents Robert Duncan McNeill and Carol McNeill.

Appellant Fabiola Wright contends the trial court erred in sustaining a demurrer, on res judicata grounds, to her petition for writ of mandate. Wright's petition sought to reverse actions taken by respondents the City of Los Angeles (the City), its Department of Building and Safety (B&S), and its Planning Department in authorizing the construction of a storage shed on the property of Wright's neighbors. We agree with the trial court that the primary rights asserted in the underlying petition were previously adjudicated in a 2009 writ proceeding involving the same parties. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Permitting Process*

Appellant Wright lives in the Venice Beach community of the City. In 2007, between June and December, B&S issued a series of permits to her neighbors, Robert and Carol McNeill, authorizing them to construct a structure classified as an "accessory storage building" in their backyard.[1] On August 13,

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[1] B&S issued five permits. The initial permit described the work as a "new accessory storage building." The remaining permits, which were described as "supplemental" to the initial permit, allowed a "slot opening" in a wall to save a tree, reclassified the building from R-3 to U-1, made clear plumbing and heating were not to be part of the project, and revised entry door requirements.

On May 24, 2007, prior to submitting applications for the permits, the McNeills obtained a document from the Planning Department indicating a "coastal exemption" had been granted. The coastal exemption document described the project as "minor repairs and/or improvements in the California Coastal Zone" and stated: "[A] determination has been made that the above-described project does not: (1) involve a risk of adverse

(Fn. continued on next page.)

2007, the Planning Department issued a "sign-off" on the project under Ordinance No. 175,693, the Venice Coastal Specific Plan.[2]

When the McNeills completed construction of the storage shed, it was less than two inches from the rear property line, which the McNeills shared with Wright, and four inches from the side property line, which they shared with another neighbor. It was 15 feet, 8 inches tall; 24 feet wide; and 11 feet, 7 inches long, a total of 201 square feet. In May 2008, B&S issued a certificate of occupancy, describing the structure as an "'Accessory Storage Structure, not to be used for human occupation or [a] Recreation Room.'"

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environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to any policy of this division pursuant to Title 14, of the California Administrative Code, and qualifies for an exemption under the category checked below, and a Coastal Development Permit is not required." The category checked was entitled "Improvements to Existing Single-Family Residences." The document described such improvements as including "all fixtures and other structures part of a residence--garages, swimming pools, fences, storage sheds but not including reduction of or addition of guest houses, self-contained residential units, or retaining walls that have a potential significant impact on coastal resources."

[2] This was the same date as the first supplemental building permit issued by B&S. In the sign-off document, the project was erroneously described as "a new non-habitable garage." In January 2008, the document was corrected by interlineating the words "a new non-habitable garage" and adding "a new 201 square foot non-habitable accessory storage building." The documents stated that a "Specific Plan Project Permit Compliance" was not required because the project was "[a]n improvement to an existing single-or-multiple-family structure that is not on a Walk Street." This was apparently in reference to Section 8, A.1 of the Venice Coastal Specific Plan, which provides that "any improvement to an existing single or multiple-family dwelling unit that is not located on a Walk Street" is "exempt from the Project Permit Compliance procedures contained in LAMC Section 11.5.7C." (It is undisputed that the street on which the McNeills live is not a "[w]alk street.")

B. *Administrative Appeals*

In October 2007, Wright appealed B&S's decision to issue the permits and certificate of occupancy to the Board of Building and Safety Commissioners (the B&S Board or the Board).[3] At a public hearing on May 20, 2008, the Board considered whether B&S abused its discretion in classifying the structure as an accessory storage building. The Board issued a formal written determination, dated May 29, 2008, concluding that no abuse of discretion had occurred.

In the meantime, on March 13, 2008, B&S issued its own written determination that it had not erred or abused its discretion in finding that the location, area, and height of the structure was consistent with, and did not violate, zoning regulations for accessory structures. Wright appealed that determination to the Director of Planning. This resulted in another hearing and another written decision -- dated January 9, 2009 -- that affirmed B&S's decision. In January 2009, Wright appealed that decision to the West Los Angeles Area Planning Commission (WLA Planning Commission).[4] On April 14, 2009, the WLA Planning Commission mailed its written determination denying the appeal.[5]

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[3] Under Los Angeles Municipal Code section 98.0403.1(b), the Board has "the power to hear and determine appeals from orders, interpretations, requirements, determinations, or actions of [B&S] pertaining to enforcement of specific ordinances, regulations, or laws in site-specific cases."

[4] Los Angeles Municipal Code section 12.26(K) provides that where a party alleges B&S has committed error or abuse of discretion in its interpretation of the zoning provisions of the Municipal Code, B&S's decision may be appealed to the Director of Planning and the Director of Planning's decision may be appealed to the City Planning Commission.

[5] The hearing focused on Los Angeles Municipal Code section 12.21(C)(5)(j), which provides that "[a]n accessory building may be located in any portion of a required rear yard, and may be located on that portion of a required side yard which is within 30 feet of the rear lot line."

C. *Prior Litigation*

1. *2009 Petition for Writ of Mandate*

In April 2009, Wright filed a petition for writ of mandate in the superior court, seeking a writ directing the City to revoke the permits that allowed construction of the structure, revoke the certificate of occupancy, and order the McNeills to demolish the structure. Wright contended that the McNeills and their architect engaged in "intentional deception" and that the McNeills' true intent was to build a recreation room. The petition alleged that the structure violated a number of zoning regulations, including the Venice Coastal Zone Specific Plan and the Oxford Triangle Specific Plan, Ordinance No. 170,155, specifically contending the structure was larger than allowed by the pertinent regulations and that it should not have been built within inches of the property line. Wright asserted that she had been robbed of the enjoyment of her yard and that her property had diminished in value. A month later, Wright filed an amended petition, which added a reference to supplemental permits issued by B&S that had not been mentioned in the original petition, and to specific regulations allegedly governing the size of storage sheds. Both versions of the petition alleged that appellant had requested "public records" from the City's Planning Commission "to no avail" and that "[t]he only documents [Wright] was able to obtain . . . was the Sign Off sheet and the Plans submitted by the Architect. . . ."

At the hearing on the petition, Wright's counsel argued that construction of the storage shed had not been properly authorized because the Planning Department had failed to issue a permit required by the Venice Coastal Specific Plan. He asked the court to take judicial notice of the ordinance (Ordinance No. 175,693) containing the Plan and other documents. Counsel for the City and the McNeills objected, contending that this argument had not been raised before either administrative body. When counsel could not identify where in the administrative

record the issue was addressed, the court sustained the objection to the request for judicial notice. Wright's counsel nevertheless was allowed to argue that the project lacked a required permit from the Planning Department and the court sought a response from counsel for the City. The City's attorney directed the court to the sign-off document issued by the Planning Department on August 13, 2007, and its statement that a coastal development permit was not required because the building was an improvement to an existing single family structure. Wright's counsel in reply pointed to Los Angeles Municipal Code section 12.20.2.1(C), contending the new storage structure did not meet its definition of "improvement."[6] After reviewing the provision, the court stated that under the plain words of section (C)(1)(a)(2) of the Los Angeles Municipal Code, improvement to a single family residence "includes a storage shed[] even though it's not attached to the residence . . . ." Specifically addressing the contention that the Planning Department was under the misapprehension that a structure already existed at the site of the storage shed when it concluded no coastal development permit was needed under the Venice Coastal Specific Plan, the court stated: "I just don't . . . find any evidence in the administrative record to indicate that [the Planning Department] was at all

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[6] Los Angeles Municipal Code section 12.20.2.1(C) provides: "The following types of Coastal Development are exempt from the requirement to obtain a Coastal Development Permit in accordance with the provisions of this section: [¶] 1. Improvements to Existing Structures. [¶] (a) Improvements to any existing structure are exempt. For purposes of this section, in order to qualify as an improvement, the Coastal Development shall retain 50% or more of the existing exterior walls of the building or structure. In addition, the following shall be considered a part of an existing structure: [¶] (1) all fixtures and other structures directly attached to the existing structure and landscaping on the lot; [¶] (2) *for single-family residences, in addition to (1) above, structures on the property normally associated with a single-family residence, such as* garages, swimming pools, fences and *storage sheds*, but not including guest houses or self-contained dwelling units, *shall also be considered part of that structure*." (Italics added.)

misled and that they weren't aware at all times, that this was an application to build a [new] structure . . . ."

By order dated December 18, 2009, the trial court denied the petition. In the order, the court described Wright's legal memoranda as "vague, prolix, and confusing." The court's order expressly rejected the contention that permission to build the structure was the result of the McNeills' or their architect's "misl[eading] the City into issuing building permits" or that the issuance of permits was somehow facilitated by false representations that "the structure already existed." The court pointed out that under the provisions of the Los Angeles Municipal Code discussed above, constructing a new storage shed was properly construed as making an "improvement" to an existing structure.[7]

2. *Appellate Decision*

Wright appealed the trial court's order. In her brief, she argued primarily that the Planning Department was required by the Venice Coastal Specific Plan to issue a permit before B&S could consider and issue its building permits, and that the May 24, 2007 coastal exemption document and the Planning Department's August 13, 2007 sign-off indicating that no permit was needed was based on erroneous information. Wright continued to assert that the storage shed did not meet the definition of an "improvement" under Los Angeles Municipal Code section 12.20.2.1(C).

By opinion and order dated February 15, 2011, Division Two of this district reviewed both the B&S Board's May 29, 2008 determination and the WLA

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[7] Wright had also contended the McNeills were misusing the structure as a recreation room and that the structure was too large for a storage shed under the applicable ordinances and regulations. The court found Wright had failed to present facts or law supporting these contentions.

Planning Commission's April 14, 2009 decision and affirmed the trial court's order denying the writ petition. With respect to the Board's determination, the court stated: "Because the accessory storage building meets [the Los Angeles Municipal Code's] area, height and construction requirements for a U-1 Occupancy Group, the [Board's] determination that [B&S] did not err or abuse its discretion in classifying the storage accessory building as U-1 Occupancy was not arbitrary, capricious or entirely lacking in evidentiary support." With respect to the WLA Planning Commission's decision, the court stated that under the applicable ordinance, "the accessory storage building could be located in any portion of a required rear yard, or on that portion of a required side yard which is within 30 feet of the rear lot line."

The court did not consider Wright's argument that construction of the storage shed violated the Venice Coastal Specific Plan because there was no authorization from the Planning Department prior to the issuance of the B&S permits. The court stated: "[Wright] has not identified where she actually argued to the administrative agencies a violation of the specific statutes she cites on appeal. We will not consider issues that were not developed before the administrative agencies, which are tasked with determining such issues."[8]

[8] Notwithstanding the court's comment, it appears the trial court did address Wright's contention regarding the Venice Specific Coastal Plan, as it noted the Planning Department's determination that the project was exempt from the Plan's permitting requirements and determined this was not the result of a misunderstanding, erroneous information or a misapplication of applicable law. In any event, as discussed below, any failure to consider an issue raised by Wright was properly the subject of proceedings in the prior suit; the judgment in that case is now final.

3. *Petitions for Rehearing and Review*

Wright petitioned for rehearing, contending that "[t]he [m]ost [i]mportant [b]uilding [p]ermit" -- referring to the first supplemental permit, issued August 13, 2007 -- was "concealed . . . [t]hroughout the administrative appeals [process]" and "discovered for the first time after the last administrative appeal to the [WLA Planning Commission]." Wright again theorized that the August 13, 2007 sign-off issued by the Planning Department was based on the mistaken belief that the McNeills were making minor improvements to an already-existing accessory building, rather than constructing a new accessory building; she contended that the storage shed could not have been considered an improvement to the existing residence under Los Angeles Municipal Code section 12.20.2.1(C) because "in order to qualify as an improvement the project was required to retain 50% of the exterior walls[;] [t]his project was a new building with no exterior walls." The petition for rehearing was denied.

Wright petitioned for hearing to the Supreme Court, raising similar issues. That petition was also denied.

4. *Federal Court Action*

In January 2011, appellant filed a civil complaint in federal court against the City, B&S, the Planning Department, and various individuals employed by these entities and involved in the permitting process or the administrative appeals. She asserted a list of claims, including violation of civil rights and fraud, related to the issuance of the permits to the McNeills. The court granted the defendants' motion to dismiss, finding the action barred by res judicata.

D. *Underlying Proceedings*

1. *Petition*

On August 22, 2011, Wright filed the underlying petition, again contending the McNeills' storage shed was constructed in violation of the Los Angeles Municipal Code and the Venice Coastal Zone Specific Plan, although this time focusing more on the latter. She added claims under the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 et seq.), the California Coastal Act (Pub. Resources Code, § 30000 et seq.), the Public Records Act (Gov. Code, § 6250 et seq.), and Government Code section 65906 (governing zoning ordinances and variances). She also asserted that the City committed fraud by leading her to believe the Planning Department had approved the construction when it had merely approved "minor work to an unpermitted building."

The petition alleged that the McNeills "manipulated the building permit process," that a coastal development permit from the Planning Commission was required, and that the storage shed was built "without the required approval by the [Planning Department]." (Italics omitted.) She alleged that the Planning Department's August 13, 2007 sign-off could not have constituted the necessary authorization because it was "for minor work (improvements) to an existing garage." Wright alleged that after the administrative appeals concluded, she discovered for the first time that the City had "intentionally concealed key evidence," specifically referring to three of the supplemental permits, including the supplemental permit issued August 13, 2007. She further contended that the administrative bodies failed to adjudicate her "central issue" which she described as "the administrative decision that 'the Sign[-]Off issued was illegal and invalid and that the building had no permit from [the Planning Department].'" (Italics omitted.)

Wright continued to seek a writ of mandate instructing the City to revoke the building permits and the certificate of occupancy issued by B&S. She also sought an order declaring that the City had violated its own ordinances and failed to ensure that all building permits complied with applicable law, an order requiring the City to make "all requested documents" available, and an order granting a new administrative hearing.

The City demurred, contending the action was barred by res judicata and collateral estoppel. Wright opposed, contending that the City had "concealed key evidence which resulted in unfair appeal hearings and decisions."

The trial court sustained the demurrer. In a detailed order that set forth the prior proceedings and the claims of the instant petition, the court explained: "Each of [the] causes of action [set forth in the underlying petition] raise[s] the same primary right claim that [Wright] sought to vindicate in [the 2009 writ proceeding] -- that the City did not follow the law with regard to the issuance of [permits for] the McNeills' shed. The final judgment in [the 2009 writ proceeding] bars the relitigation of these causes of action where, as here, they could have been brought in the first action. [Citation.]" With respect to the claim that important records were concealed, the court stated: "[Wright] admits that she discovered having been 'intentionally deceived by the City' before filing the First Amended [Petition for] Writ of Mandate. [Citation.] Having appreciated this fact at an early stage in the [2009 writ] proceeding, [Wright] could have moved under CCP Section 1094.5(c) to augment the administrative record . . . with this evidence. The issue of concealment could have been, and ought to have been[,] raised[] in [the 2009 writ proceeding]. [Wright's] claim of concealment, therefore, is collaterally estopped." (Fn. omitted.)

DISCUSSION

"The doctrine of res judicata gives certain conclusive effect to a former judgment in subsequent litigation involving the same controversy. It seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration." (7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 334, p. 938.) The primary aspect of res judicata, known as claim preclusion, "prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them." (*Mycogen Corp. v. Monsanto Co*. (2002) 28 Cal.4th 888, 896-897.)[9] In this context, "cause of action" refers to "the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced." (*Boeken v. Philip Morris USA, Inc*. (2010) 48 Cal.4th 788, 798.) ""Hence, a judgment for the defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same right, even though he presents a different legal ground for relief." [Citations.]"" (*Id*. at p. 798, italics omitted, quoting *Slater v. Blackwood* (1975) 15 Cal.3d 791, 795.)

To determine whether a subsequent action is barred, California courts compare the claims asserted in that action with the claims asserted in the prior proceeding using the "'primary right'" theory. (*Boeken v. Philip Morris USA, Inc*., *supra*, 48 Cal.4th at pp. 797-798.) Under this theory, a cause of action consists of "'(1) a primary right possessed by the plaintiff, (2) a corresponding duty imposed upon the defendant, and (3) a wrong done by the defendant which is a breach of such primary right and duty.'" (*Boblitt v. Boblitt* (2010) 190 Cal.App.4th 603,

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[9] The secondary aspect of res judicata, known as collateral estoppel or issue preclusion, "'precludes relitigation of issues argued and decided in prior proceedings.'" (*Mycogen Corp. v. Monsanto Co*., *supra*, 28 Cal.4th at p. 896.)

610.) Two proceedings involve a single cause of action for purposes of claim preclusion if they both seek vindication of the same primary right. (*Boeken v. Philip Morris USA, Inc*., *supra*, at p. 798; *Branson v. Sun-Diamond Growers* (1994) 24 Cal.App.4th 327, 341; see *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1202 ["The plaintiff's primary right is the right to be free from a particular injury, regardless of the legal theory on which liability for the injury is based."].) "'If the matter was within the scope of the [prior] action, related to the subject-matter and relevant to the issues, so that it could have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged.'" (*Warga v. Cooper* (1996) 44 Cal.App.4th 371, 377-378, italics omitted, *Sutphin v. Speik* (1940) 15 Cal.2d 195, 202.)

1. *Preclusive Effect of Prior Litigation*

The primary right in this case was Wright's right to the quiet enjoyment of her property, free from construction on neighboring properties that violated zoning laws, building codes and any other applicable law. In the 2009 writ proceeding, Wright claimed she was harmed by the McNeills' construction of the storage shed. She asserted that B&S and the Planning Department failed to follow or properly interpret applicable law in issuing permits and otherwise authorizing the construction of the storage shed. In the instant petition, she claimed the same right and the same wrong or breach of duty. Accordingly, res judicata precludes litigation of the underlying petition.[10]

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[10] Respondents draw our attention to *Mata v. City of Los Angeles* (1993) 20 Cal.App.4th 141, in which the court expressed doubt that preclusive effect should be given in a civil rights action under 42 United States Code section 1983 to a prior ruling on a petition for writ of mandate because "[a] mandamus proceeding is technically not
(Fn. continued on next page.)

Much of Wright's brief on appeal emphasizes the myriad ways in which the claims raised in the underlying petition mirror those raised in the prior administrative and court proceedings, including the alleged lack of a required permit from the Planning Department, the alleged violation of the Venice Coastal Specific Plan, the alleged violation of CEQA and the alleged violation of the California Coastal Act.[11] She contends she "raised the issues in the [2009 writ proceeding] but the decision makers [referring to the administrative bodies that adjudicated her appeals, the trial court and the Court of Appeal] ignored and/or refused to hear [her] allegations." For example, she contends that in 2008, her "central allegation" before the B&S Board was the lack of a required permit from the Planning Department, that the WLA Planning Commission "refus[ed] to take into consideration [her] contention that the building required a permit and variances," that the trial court in the 2009 writ proceeding "refused to accept [her] new evidence . . . imped[ing] [it] and the [a]ppellate [c]ourt from making a just decision," and that the court "misinterpreted" an important statute.

Under the doctrine of claim preclusion, where two proceedings involve the same primary rights, a final judgment in the first is conclusive with respect to the rights asserted in the second. (*Boeken v. Philip Morris USA, Inc*., *supra*, 48

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regarded as an action at all." (*Mata v. City of Los Angeles, supra,* at p. 149.) As explained in *Federation of Hillside & Canyon Assns. v. City of Los Angeles*, the language in *Mata* was "an attempt to explain why the causes of action were not the same, rather than a holding that res judicata was inapplicable because the prior ruling was in a special proceeding." (*Federation of Hillside & Canyon Assns. v. City of Los Angeles, supra,* 126 Cal.App.4th at p. 1205.) The *Federation* court found "no reason to distinguish between actions and special proceedings [citation] for purposes of res judicata if the requirements of the doctrine are satisfied and if the issues asserted in the later proceeding could have been asserted in the prior proceeding." (*Ibid*.) We agree.

[11] We note that neither the 2009 writ petition nor the amended petition mentioned CEQA or the California Coastal Act. Wright contends these claims were raised in legal memoranda or briefs or during the administrative appeal process.

Cal.4th at p. 798; *Mycogen Corp. v. Monsanto Co*., *supra*, 28 Cal.4th at pp. 896-897.) Res judicata applies even where the original determination was contrary to law, as long as the court had fundamental jurisdiction over the subject matter and the parties. (*Pacific Mut. Life Ins. Co. v. McConnell* (1955) 44 Cal.2d 715, 725; *Law Offices of Stanley J. Bell v. Shine, Browne & Diamond* (1995) 36 Cal.App.4th 1011, 1024-1025.)[12] To the extent Wright faults the original decision makers, her avenue of review was to the trial court in the prior writ proceeding. Any error by the trial court was properly addressed to the Court of Appeal. Any error by that court was properly the subject of a petition for rehearing and petition seeking review by our supreme court. Wright availed herself of all these avenues of relief, and the decision on those claims is now final.[13]

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[12] Wright asserts that "[c]ollateral estoppel applies only to issues that have actually been determined in the first action." The secondary aspect of res judicata -- issue preclusion -- requires a showing that a specific issue was both "identical to [one] decided in a former proceeding" and "actually litigated in the former proceeding." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) Here, however, we are concerned with the primary aspect of res judicata -- claim preclusion.

[13] Wright clearly believes the administrative bodies, the trial court and the Court of Appeal were all mistaken in their interpretation of the pertinent laws and ordinances or unfairly overlooked issues she raised. But we must reject her invitation to conduct a collateral review. "[W]here [a] court or agency had fundamental jurisdiction over the parties and the subject matter, then its determination may ordinarily be attacked only by appeal or other direct review, and unless successfully so attacked, the determination is res judicata of the matter determined, and beyond collateral attack. [Citations.] This is so even though the determination be palpably erroneous, for fundamental jurisdiction, '"'being the power to hear and determine, implies power to decide a question wrong as well as right.'"' [Citation.]" (*REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 501, fn. omitted.) "[The unsuccessful party] cannot escape the bar of the prior decisions by asserting that those decisions were wrong, or that [he or she has] other evidence which was not introduced in the earlier proceedings. '"[An] erroneous judgment is as conclusive as a correct one."'" (*MIB, Inc. v. Superior Court* (1980) 106 Cal.App.3d 228, 235, quoting *Busick v. Workmen's Comp. Appeals Bd*. (1972) 7 Cal.3d 967, 975.)

Elsewhere in her brief, Wright tries the opposite tack, contending "[r]es [j]udicata should not apply when different harms suffered are at issue." She claims that the 2009 writ proceeding involved the duty to "process the building permit applications and building plans as required by law" and the harms of "an unsafe building adjacent to her property" and "diminution of her property value and the right of enjoyment of her home and garden," whereas the underlying action involved the duty "to provide Wright with all of the documents [she] requested pursuant to the Public Records Act and to hear, consider and adjudicate [her] legitimate claims/issues" and the "right to be granted fair and impartial hearings and trial. . . ." This is not an accurate description of the underlying petition. While Wright's most recent petition alleged that the City failed to provide her with significant documents, this allegation was neither new nor the crux of her petition. Her prior petition had also alleged such concealment and, like her prior petition, the gravamen of the instant petition was that she had suffered harm from the City's failure to follow the law in permitting the construction of the McNeills' shed. Like her prior petition, the instant petition sought an order directing the City to revoke the permits and certificate of occupancy issued by B&S. The gravamen of the underlying petition thus invoked the same primary rights as her prior petition.

In her reply brief, Wright contends that the claim of violating the California Coastal Act asserted in the underlying petition establishes that the primary rights involved are different. To the extent the most recent petition asserted statutory or other claims not asserted in the 2009 petition, assertion of a different legal ground for relief does not alter the primary right. (*Boeken v. Philip Morris USA, Inc.*, *supra*, 48 Cal.4th at p. 798.) "[A]ll claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date." (*Mycogen Corp. v. Monsanto Co.*, *supra*, 28 Cal.4th at p. 897.) This claim, like the others in the instant petition, "'was within the scope of the [prior] action,

related to the subject-matter and relevant to the issues'"; accordingly, it could have been raised in the prior action and "'the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged.'" (*Warga v. Cooper*, *supra*, 44 Cal.App.4th at pp. 377-378; *Sutphin v. Speik*, *supra*, 15 Cal.2d at p. 202.)

2. *New Evidence/Fraud*

Citing no pertinent California authority, Wright contends that res judicata should not apply because documents were concealed from her and she did not have a fair opportunity to litigate her claims in the prior proceeding.[14] She identifies as concealed documents three of the four supplemental permits issued by B&S, and plot and building plans approved in June and August 2007, but ascribes significance only to the supplemental permit issued on August 13, 2007. Wright claims that had she known of this supplemental permit, she "would have been able to prove that the approval on August 13, 200[7], by [the Planning Department] was not for the construction of a new building but for minor work/improvement to a two months old unpermitted building." (Italics omitted.)

As the court below correctly observed, the described documents do not constitute new evidence. Wright admits that she knew about the purportedly concealed documents before she filed the amended petition in the 2009 writ proceeding and asked the court to take judicial notice of them. As the trial court stated in denying the underlying petition, Wright was required to litigate the

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[14] In her petition, Wright's fraud claim is likewise based on her contention that documents were concealed from her, preventing her from recognizing the possibility that the Planning Department's sign-off was based on a misapprehension of the facts. In her brief, she contends the fraud consisted of specific statements made by employees of the City engaged in the permitting process. As no such factual contentions were asserted in the petition, we do not consider them here.

pertinence and admissibility of those documents in the prior proceeding.[15] The trial court's decision to exclude the documents was reviewable on appeal from the order denying the 2009 writ petition. It cannot be collaterally attacked in a subsequent proceeding.

3. *Public Policy*

Wright contends res judicata should not apply because the case involves interpretation of "an important statute affecting all homeowners in the City of Los Angeles." Courts have said that "collateral estoppel will not be applied 'to foreclose the relitigation of an issue of law covering a public agency's ongoing obligation to administer a statute enacted for the public benefit and affecting members of the public not before the court.'" (*Sacramento County Employees' Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440, 452, quoting *California Optometric Assn. v. Lackner* (1976) 60 Cal.App.3d 500, 505; see *Chern v. Bank of America* (1976) 15 Cal.3d 866, 872.) In that situation, the party urging relitigation must establish "'a clear and convincing need for a new determination of the issue . . . .'" (*Modesto City Schools v. Education Audits Appeal Panel* (2004) 123 Cal.App.4th 1365, 1379, quoting Rest.2d Judgments, § 28.) The prior proceeding determined whether the McNeills' storage shed was correctly characterized, appropriately sized, and properly placed, and whether additional permitting was required. Wright has not shown that the matters determined will have a sizeable effect on the members of the public. The parties on whom this

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[15] As discussed, the court in the 2009 proceeding heard and rejected the contention that the documents indicated that the Planning Department had been misled about the nature of the construction on the McNeills' property when it concluded no coastal development permit was required under the Venice Coastal Specific Plan.

litigation has the most immediate impact -- the McNeills -- have been embroiled in this controversy for years and are entitled to have the matter put to rest.

Moreover, the only statute or law Wright contends needs immediate clarification is Los Angeles Municipal Code section 12.20.2.1(C), which defines "improvement" to include construction of a new storage shed. We are not persuaded that this provision was misinterpreted by the court or the administrative bodies.

4. *Leave to Amend*

The trial court sustained the demurrer without granting Wright leave to amend. Where a demurrer is sustained without leave to amend, the appellate court must determine whether there is a reasonable probability that the complaint or petition could have been amended to cure its defects. (*Barroso v. Ocwen Loan Servicing, LLC* (2012) 208 Cal.App.4th 1001, 1008.) If so, the trial court has abused its discretion. (*Ibid*.) Wright has not suggested how the petition could be successfully amended to escape the bar of res judicata.

DISPOSITION

The order denying the petition is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.